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FEDERAL COMMUNICATIONS COMMISSION
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In the Matters of)

Rulemaking to Amend Part 1 and Part 2)
of the Commission's Rules to Redesignate)
the 27.5 - 29.5 GHz Frequency Band for)
Local Multipoint Distribution Service;)

CC Docket No. 92-297

RM-7872; RM-7722

Applications for Waiver of the)
Commission's Common Carrier Point-to-)
Point Microwave Radio Service Rules;)

Suite 12 Group Petition for Pioneer's)
Preference;)

PP-22

University of Texas - Pan)
American Petition for Reconsideration)
of Pioneer's Preference Request Denial)

**COMMENTS OF BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.
TO NOTICE OF PROPOSED RULEMAKING, ORDER,
TENTATIVE DECISION AND ORDER ON RECONSIDERATION**

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**COMMENTS OF BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.
TO NOTICE OF PROPOSED RULEMAKING, ORDER,
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Bell Atlantic Personal Communications, Inc. (BAPCI), on behalf of the Bell Atlantic companies,¹ respectfully submits these comments to the Commission's Notice of Proposed Rulemaking and Tentative Decision (NPRM).

I. Use of the 28 GHz Band.

In general, Bell Atlantic supports the Commission's proposal to redesignate the 28 GHz band from point-to-point microwave common carrier service to local multipoint distribution

¹ The New Jersey Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Diamond State Telephone Company, The Chesapeake and Potomac Telephone Companies, and Bell Atlantic Enterprises International, Inc.

service (LMDS). As the NPRM notes, the 28 GHz band has been available for common carrier point-to-point microwave service for more than 30 years.² In that time, however, few applicants have sought licenses to operate in these frequencies. Meanwhile, improvements in radio technology have made it possible to exploit ever higher frequency bands, with the result that services not imagined for delivery over these upper bands are now possible and economically feasible. The most promising of these is video services.

During the last decade, subscription to CATV service grew briskly. However, a number of problems soon surfaced. In many instances, service quality was less than customers expected and price increases occurred more often than many thought justified.³ These problems were made more acute by the monopolistic position of the vast majority of cable operators in the United States, and this lack of competition prevented market forces from exerting a corrective influence upon the industry. By redesignating use of the 28 GHz band for LMDS, the FCC can encourage new entrants into the video service market and provide the necessary additional competition needed to assure that the best video products and services are available to the American public.

For these new entrants to compete successfully with the established cable operators, they must have the capability to offer a rough parity of the number of programming options that the existing cable operators can provide. Many cable systems today can deliver scores of channels to subscribers, and for a new entrant to succeed, it must be able to present a competitive offering

² Local Multipoint Distribution Service, CC Docket No. 92-297; RM-7872; RM-7722: PP-22, Notice of Proposed Rule Making, Order, Tentative Decision, and Order on Reconsideration (Released January 8, 1993) at 3 (hereafter "LMDS NPRM").

³ FCC data show that average basic cable rates have increase 48% since 1986, even though the number of basic cable channels has remained largely unchanged. *Cable Systems' Rates Up 48% Since 1986, But They Don't Add Channels*, COMMUNICATIONS DAILY, February 26, 1993 at 1.

to consumers. For these reasons, Bell Atlantic believes that the proposal of the University of Texas⁴ to reserve one-half of the 28 GHz band for educational use, while well intentioned, would nonetheless have the effect of either reducing the number of new video services entrants or of hamstringing the ability of new video services entrants to compete with the established cable TV provider. Consequently, the entire 28 GHz band should be made available to video services as the NPRM proposes.

Some parties⁵ have suggested that the FCC establish a system of set-asides in the band to permit wireless cable operators to overcome various competitive difficulties the industry alleges it faces. Bell Atlantic agrees with the Commission that these claims are unsupported, especially given the headstart that wireless cable systems enjoy. The Commission should confirm its tentative conclusion not to set aside any portion of the 28 GHz band for MMDS (multi-point, multi-channel distribution systems) licensees or for any other group of licensees.

II. Licensing Issues

The Commission proposes to license two LMDS carriers in each of the 487 "Basic Trading Areas" as defined by the Rand-McNally 1992 COMMERCIAL ATLAS AND MARKETING GUIDE. The FCC proposes to choose the licensees by lottery or by competitive bidding should such authority be available. In addition, the FCC proposes not to exclude "any existing video distribution or telecommunications firm from constructing and operating 28 GHz facilities."⁶ Overall, Bell

⁴ LMDS NPRM at 7, n.6.

⁵ LMDS NPRM at 5 to 6; 7.

⁶ NPRM at 13.

Atlantic supports these proposals. However, some of the Commission's other proposals regarding LMDS licenses require comment.

A. License Status.

In particular, the Commission proposes to let LMDS carriers choose whether to be licensed on a private or common carrier basis as is now done for MMDS.⁷ While the freedom to make this election would pose competitive issues even with regard to video services, the problems become particularly acute if the election is extended to non-video, telephony services.

Private carriers may not resell interconnected telephone service for profit;⁸ but beyond this restriction, there appears little other meaningful difference between private and common carriage⁹ save only the possibility that the Commission could preempt state regulation of private LMDS operators.¹⁰

If LMDS licensees are to provide common carrier-like telecommunications services, then, in Bell Atlantic's view, they ought to be required to offer those services on the same basis as the carriers with whom they compete. The effect of regulation should not be to endow one group

⁷ NPRM at 10; 47 C.F.R. 21.900(c).

⁸ See: Amendment of Part 90 of the Commission's Rules to Prescribe Policies and Regulations to Govern the Interconnection of Private Land Mobile Radio Systems, 93 FCC 2d 1111, 1115 (1983) on recon., 49 Fed. Reg. 26066 (1984), aff'd by judgment sub nom. *Telocator v. FCC*, 764 F.2d 926 (D.C. Cir. 1985).

⁹ See, e.g., In the Matter of Fleet Call Inc., 6 FCC Rcd. 1533, 1537 (1991) [National Association of Regulatory Commissioners Petition for Reconsideration at 8 *et seq.*; Comments of Cellular Telecommunications Industry Association at 35-37].

¹⁰ The Commission proposes to preempt state regulation of video services by non-common carrier LMDS operators, and requests comment on the extent to which state regulation should be preempted for LMDS licensees choosing non-common carrier status for non-video services. LMDS NPRM at 11 to 12.

of carriers with artificial advantages over carriers with whom they are going to compete in the provision of virtually identical services.

Similarly, if various carriers compete to offer the public substantially similar services, it injures both consumers and competition to make one carrier "dominant" and require its prices to be published before becoming effective, while permitting the "non-dominant" carriers the freedom to adjust their prices more or less at will. No genuine price competition occurs in this environment because the dominant carrier's publicly posted prices serve as a reference by which the other carriers will set theirs. From this perverse incentive inevitably follows that regulatory spectacle in which the non-dominant carriers offer to demonstrate, with all the reasons their imagination has discovered, the perfect harmony among their competitor's higher prices, the public interest, and their own well being. Bell Atlantic submits that the better policy is to foster competition on a level playing field, and urges the Commission to adopt one set of rules to govern *all* providers of a telecommunications service.

B. Construction and Coverage Requirements; Term of License.

The Commission proposes that the LMDS licensee be capable of serving 90% of the population in the service territory within three years of receiving the license.¹¹ This requirement will impose significant hardships on many, if not most, LMDS operators.

The Commission has proposed using basic service areas (BTAs) for defining the geographic extent of the LMDS licenses. In many of these BTAs, population density is quite low and widely dispersed. To reach 90% of the population in many of these areas, especially within the time proposed, may well be economically infeasible. Moreover, given that 28 GHz

¹¹ LMDS NPRM at 13.

technology is relatively new, the proposed three-year-90%-coverage rule is aggressive when laid against the technical problems that so often bedevil rapid and widespread deployment of new technologies.

In the cellular rules, operators were required to cover at least 75% of the MSA's area or population within three years of the license's issuance.¹² In retrospect, however, the obligation to meet certain coverage requirements proved less a spur to construction than did market forces: competitive pressure forced almost all carriers to exceed the FCC's 75% rule.

If history is any guide in this instance, then, the Commission need only adopt sufficient minimum requirements to guard against the rare case of spectrum warehousing and rely on market forces to determine how extensively the LMDS infrastructure will be built out.. Given that the size of the cells for LMDS will be considerably smaller than those for cellular - and therefore more shall be required to cover a given area, the FCC should adopt a coverage requirement of no more than 50% of a BTA's population within three years of the issuance of the initial license.

The Commission also proposes a five-year license term for LMDS. This is too short. If the LMDS operator is to build out the network as quickly as possible, the licensee will need capital to finance the construction of the network and to sustain operations until the enterprise can operate profitably. Investors - whether they are lenders or equity holders - are unlikely to put money at risk in a capital intensive venture such as this if the LMDS operator can lose the license before the venture has begun to show a return on their investment. Bell Atlantic therefore recommends that the Commission follow the cellular model and adopt a ten-year license term.

¹² Cellular Lottery Order, 98 F.C.C.2d 175 (1984).

C. Application Requirements.

Bell Atlantic supports the Commission's efforts to establish filing requirements that will bring as many innovative and competitive services to the public as soon as possible while screening out insincere, speculative applications. In this regard, the Commission should adopt its proposed "letter perfect" standard for applications; which results in a speedier administrative process despite the burden of careful preparation it imposes upon applicants.

Bell Atlantic also supports the FCC's proposal to require applicants to meet a "firm financial commitment" standard of the kind that has been demanded for cellular applications in the markets below the top 120. The Commission's further proposal that applicants present a detailed business and construction plan to serve the territory sought should be adopted as well. Together, these proposals will help to ensure that only sincere, qualified applications are submitted for LMDS licenses.

The FCC proposes two other requirements to reduce the number of speculative applications. One is a system of construction completion benchmarks that would condition the LMDS license on the completion of construction within three years of the grant of the license. The second proposal is to establish a one-calendar-day filing opportunity for the initial applications. Bell Atlantic supports this latter proposal, which aims at reducing the number of "cookie-cutter" filings.¹³ Bell Atlantic also supports the proposal to meet certain construction requirements so long as this requirement is moderated to reflect the reservations expressed above on the proposed three-year-90% coverage rule.¹⁴

¹³ The 60-day cut-off rule used for many applications gives speculators or other insincere applicants the opportunity to file copies of applications already on file.

¹⁴ *Supra* at 5-6.

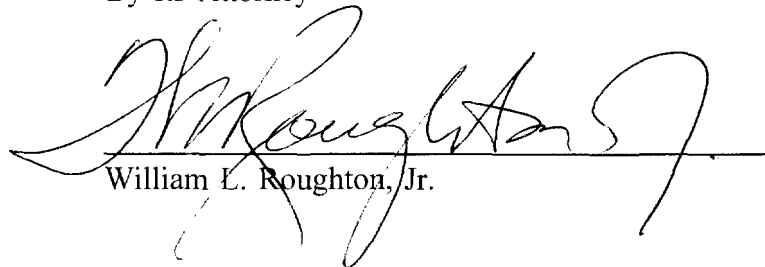
CONCLUSION

Bell Atlantic supports the Commission's proposals to change the use of 28 GHz band from point-to-point common carrier microwave service to local multipoint distribution service. To the extent, however, that this new class of service providers will have the flexibility to offer services traditionally offered by common carriers, Bell Atlantic urges the FCC to establish regulations that ensure a "level playing field" for all service providers. In addition, Bell Atlantic generally supports the Commission's efforts to fashion application procedures that will reduce the number of speculative applications and provide for the rapid delivery of new and innovative services to the American public.

Respectfully submitted,

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